

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MICHAEL STREAKER,	:	APPEAL NO. C-130142
	:	TRIAL NO. 12CV-23707
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RAY VILCINSKAS,	:	
	:	
and	:	
	:	
KATHY VILCINSKAS,	:	
	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendants-appellants Ray and Kathy Vilcinskaskas appeal the trial court's judgment awarding \$1107.11 to plaintiff-appellee Michael Streaker for damage done to his personal property after a huge rotten tree limb fell from a tree located on the Vilcinskaskes' property. We affirm.

In their single assignment of error, the Vilcinskaskes contend that the trial court erred in awarding damages to Streaker because the tree limb fell due to an "Act of God" and not because the Vilcinskaskes had been negligent in maintaining the tree.

A review of the record demonstrates that the Vilcinskaskes had actual notice that there was a danger that tree limbs from their tree were likely to fall and thus,

were negligent in maintaining their tree. *See Heckert v. Patrick*, 15 Ohio St.3d 402, 473 N.E.2d 1204 (1984). From 2008 to 2012, tree limbs from the Vilcinskases' tree had fallen into Streaker's yard every year except in 2009. In 2009, the Vilcinskases had had the tree pruned.

Although the tree limb fell after a storm with high winds passed through Cincinnati in July 2012, the "Act of God" defense is not applicable here where proper maintenance of the tree; i.e., yearly pruning in this case, would have avoided tree limbs falling despite the storm. *See Bier v. New Philadelphia*, 11 Ohio St.3d 134, 135, 464 N.E.2d 147 (1984).

The single assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on December 6, 2013
per order of the court _____.
Presiding Judge